IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3065 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJKOT MUNICIPAL CORPORATION

Versus

STATE OF GUJARAT

Appearance:

MR SHAKTISINH GOHIL for Petitioners No. 1-2

MR LB DABHI AGP for Respondent No. 1

MR AK CLERK for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/02/2002

ORAL JUDGEMENT

1. By way of this petition, the petitioner has sought for quashing and setting aside the order dated 11-4-2001 passed by the Government whereby the resolution of the Rajkot Municipal Corporation dated 27-3-2001 has been suspended under the powers vested in the Government

u/s 451 (1) of the Bombay Provincial Municipal Corporations Act, 1949 (Hereinafter referred to as the "BPMC Act").

2. This petition has been filed by the Rajkot Municipal Corporation through its Mayor and Chairman, Sanitation Committee u/s 5 of the BPMC Act. The petitioner is required to have a seal and accordingly the petitioner has Lotus Symbol as a seal of the Rajkot Municipal Corporation which is similar to the symbol accepted as an election symbol of the political party. Hence, the petitioner Corporation felt that the petitioner is representing the whole city and it is not proper to have seal which is symbol of a political party. The Chairman of the Sanitation Committee wrote a letter to the Secretary, Rajkot Municipal Corporation on 23-3-2001 to include an item in the agenda changing the seal used by the petitioner. The motion was moved by the Chairman of the Sanitation Committee on 27-3-2001 and it was supported by one member of Municipal Corporation requiring to cancel the picture of lotus as symbol of the petitioner and to substitute the picture of two pigeons sitting on the branch of a tree. It is also stated that the new seal will give a message of the nature of the Rajkot city and that the symbol will not create any controversy. In the general meeting of the Board held on 27-3-2001 the resolution was moved for change of the seal and that was passed unanimously by all the members present at the relevant time. In the General Board meeting of the petitioner held on 29-3-2001 the minutes of the General Board meeting held on 27-3-2001 was approved without any controversy or any opposition from any member of the General Body of the petitioner. The said resolution was suspended by the order dated 11-4-2001 by the Joint Secretary, Urban Development and Urban Housing Development Department and that action of the respondent is arbitrary, illegal and violative of principles of natural justice. The petitioner wrote another letter to the respondent no. 1 on 12-4-2001 making clarification that there was no violation or any controversy in the city of Rajkot in respect of the decision regarding change of seal of Rajkot Municipal Corporation. In the General Board meeting of the Corporation held on 20-4-2001 resolved by the resolution no. 8 that the General Board Resolution No. 60 dated 27-3-1991 was legal one and that is the prerogative of the petitioner and there is no requirement for approval for the said label.

3. The affidavit-in-reply has been filed by the Under Secretary, Urban development and Urban Housing

Development, Gandhinagar, wherein it is stated that there is no reason for the present body of the Corporation to change emblem particularly at this juncture when the city of Rajkot had other problems like second successive year of water shortage and it was not necessary to change emblem of the Corporation and it was not necessary to give any opportunity of hearing to the parties or person for exercising the powers u/s 451 (1) of the BPMC Act for passing the order dated 11-4-2001. It is further stated that in the General Meeting held on 27-3-2001 there was lot of heat and there was unruly scenes and slogan shouting during the meeting when the issue of changing emblem was passed. The attention of the administration was drawn to the urgent problem of proper distribution of water the resolution has created lot of disturbance by unruly scenes which is not in the interest of public. The symbol of the petitioner Corporation is not the same which is used by the political party. The present symbol has been in existence since 1949 and it is not necessary of creating such disturbances in the administration of the Corporation by passing such resolution for changing the emblem of the petitioner.

4. The respondent no. 2 has also filed affidavit-in-reply stating similar averments as made in the affidavit-in-reply filed by the respondent no. 1.

5. At the initial stage, the operation of the impugned order was stayed by this Court vide order dated 27-4-2001.

6. Since the petitioners are using the new symbol in the seal, as order of suspension passed by the State Government is not in operation. In the order it is stated that the petitioner Corporation is required to solve the major problems and amenities to the public at large and there was no possibility of raising dispute by following the said resolution. As a result, there may be difficulties in the administration of Rajkot Municipal Corporation which can disturb for the aminities of the common people. As such, the resolution passed by the petitioner Corporation is not in the public interest and there seems adverse effect on the peace of the public by following the said resolution.

7. So far as the likelihood of disturbance of the public peace is concerned, nothing has happened after passing the said resolution and using the new symbol in the seal under the provisions of Section 451 (1) of the BPMC Act, the resolution can be stayed by the State Government, if it is in contravention or in excess of the

powers conferred by this Act or any other law for the time being in force and is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons. Nothing has happened after the impugned resolution by using the new emblem in the seal. As such, it cannot be said that any resolution was likely to lead breach of peace or to cause injury or annoyance to the public. Admittedly, there was no contravention or exercise of powers conferred by the Act or any other law for time being in force. The petitioner has prerogative to use the emblem which was being used since 1949 or to discontinue it, the State Government has no concerned and the petitioner Corporation has not violated any rule or any provision of law. It appears that the implementation of the said resolution has been suspended by the State Government vide the impugned order only on the apprehension of some disturbance to be raised in the administration of the respondent Corporation. But there is nothing on record to show that any disturbance has been created in the general public of Rajkot city or any injury has been caused to the public at large under the provisions of the provisions of Section 451 (1) of the BPMC Act. Further, there is also nothing on record to show that the issue of change in the emblem has created lot of heat and there was unruly scenes and slogans shouting during the meeting, as asserted by the under Secretary as an averment which might be, as a result of some complaint which might have been made to the State Government in this respect.

8. Considering the entire facts and circumstances of this case and the submissions made by the learned counsel for the parties as well as the material on record, I do not find any good reason to suspend the order passed by the petitioner Corporation. Accordingly, this petition is allowed and the order passed by the State Government on 11-04-2001 suspending the execution and implementation of the resolution dated 27-3-2001 passed by the petitioner Rajkot Municipal Corporation is hereby quashed and set aside. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/